

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

Criminal No. 12-280 (MJD/JJK)

DEMETRIUS DEMARCO SPENCER,

Defendant.

Richard A. Newberry, Jr., Esq., Assistant United States Attorney, Counsel for Plaintiff.

Douglas Olson, Esq., Assistant Federal Defender, Counsel for Defendant.

This matter is before the Court on Defendant's Motion to Dismiss Based on Intentional Destruction of Potentially Material Exculpatory Evidence. [Docket No. 41] The Court heard oral argument and conducted an evidentiary hearing on January 14, 2013.

Defendant moves the Court for an Order dismissing the indictment on the grounds that the Minneapolis Police Department failed to preserve potentially exculpatory evidence in the instant case despite a specific court order instructing the prosecution to preserve the evidence. A Defendant's due process rights are

implicated when the Government fails to preserve potentially exculpatory evidence. Arizona v. Youngblood, 488 US 51, 58 (1988). In order to prove that a due process violation occurred, the Defendant must prove that the government acted in bad faith, the evidence had exculpatory value, and comparable exculpatory evidence was not reasonably available to the Defendant. Id.; U.S. v. Clark, 980 F.2d 1143, 1147 (8th Cir. 1992). The Court concludes that there was comparable exculpatory evidence available to the Defendant in the form of a video recording from a private source that captures the events leading to the indictment. Therefore, the Court denies the Defendant's Motion to Dismiss.

Accordingly, based upon the files and records herein, **IT IS HEREBY ORDERED:**

Defendant Demetrius Demarco Spencer's Motion to Dismiss Based on Intentional Destruction of Potentially Material Exculpatory Evidence [Docket No. 41] is **DENIED**.

Date: January 14, 2013

s/ Michael J. Davis

Michael J. Davis
Chief Judge
United States District Court